

REMARKS

Claims 1-20, 22-81 and 83-99 are pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Provisional Double Patenting Rejections:

The Examiner provisionally rejected claims 1-99 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-61, 1-40, 1-71, 1-203, 1-116 and 1-111 of co-pending Application Nos. 10/055,649, 10/055,645, 10/055,741, 10/055,641, 10/055,773 and 10/054,809, respectively. Applicants note that claims 21 and 82 were cancelled by a previous amendment. Applicants traverse this rejection for at least the reasons below.

In the Office Action mailed April 13, 2006 the Examiner provisionally rejected claims 1-99 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-61, 1-40, 1-71, 1-203, 1-116 and 1-111 of co-pending Application Nos. 10/055,649, 10/055,645, 10/055,741, 10/055,641, 10/055,773 and 10/054,809, respectively. Applicants traversed this rejection on the grounds that the Examiner did not state a proper *prima facie* rejection. The only support given by the Examiner for the rejection was that “they are not patentably distinct from each other because of their similarities.” However, simply having similarities is not a proper reason for holding the claims of the present application obvious from the claims of the listed applications. According to MPEP 804.II.B.1, “the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. 103(a) rejection.” This section of the MPEP also states that the same “factual inquires ... that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are employed when making an obviousness-type double patenting analysis.” MPEP 804.II.B.1 also states that the Examiner should list the differences between **each** rejected claim and the claims of the other patent/application, and for **each** difference the Examiner should give the reasons why a person of ordinary skill in the art would

conclude that the invention defined in the claim is an obvious variation of the invention defined in a claim of the other patent/application. Simply stating that the claims have similarities is not a valid reason why a person of ordinary skill in the art would conclude that the invention defined in each claim is an obvious variation of the invention defined in a claim of the other patent/application. Nor did the Examiner specifically address **each difference of each claim** of the present application compared to the claims of the other applications. Instead, the Examiner improperly lumped all the claims together and did not address each specific difference. The Examiner clearly did not meet the requirements stated in MPEP 804.II.B.1 to establish a *prima facie* obviousness-type double patenting rejection. Accordingly, Applicants requested removal of the provisional double patenting rejections of claims 1-99.

In the Response to Arguments section of the Final Action mailed September 8, 2006, the Examiner submits that Applicants' arguments were fully considered, but were not persuasive. The Examiner submits, "The analysis is more clearly shown in the table below," i.e., in the table included in the Final Action. Applicants assert, however, that the table included in the Final Action still does not meet the requirements stated in MPEP 804.II.B.1 to establish a *prima facie* obviousness-type double patenting rejection and discussed above.

The table includes two columns, one with the heading "10/055,547 (claim 1)" and one with the heading "10/164,259 (claim 1, 9, 10, and 21)". **First, Applicants note that 10/164,259 is the application serial number for a different patent application than any of those listed in the Examiner's rejection.** Therefore, the Examiner's reliance on this application in his analysis is improper, since he has not presented any evidence that the claims of the instant application are not patentably distinct from the claims of the applications referenced in his rejection. Second, this table clearly does not serve to list the differences between each rejected claim and the claims of the other patent/application, as required. For example, while the Examiner has rejected claims 1-99, this table illustrates only some similarities between Applicants' claim 1 and various claims of 10/164,259, primarily dependent claims of this application.

In addition, the Examiner has again failed to comply with the requirement that for each difference the Examiner must give the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim is an obvious variation of the invention defined in a claim of the other patent/application. This requirement is essentially the same as for rejections under § 103 and must be supported by evidence, not just the Examiner's own conclusions. The table clearly includes subject matter in column one that is not found in column two, and which is not discussed by the Examiner. For example, there is nothing in column two about peer group advertisements, nor about a membership protocol for joining discovered peer groups, both of which are recited in claim 1 of the instant application. **Thus, the Examiner's own table serves to illustrate that there are differences between the claims of the different applications that have not been shown to be obvious.**

For at least the reasons above, Applicants assert that the Examiner has still failed to establish a *prima facie* obviousness-type double patenting rejection. Accordingly, Applicants respectfully request removal of the provisional double patenting rejections.

Section 102(e) Rejection:

The Examiner rejected claims 39-41 and 43-45 under 35 U.S.C. § 102(e) as being anticipated by McCanne et al. (U.S. Patent 6,415,323) (hereinafter "McCanne"). Applicants respectfully traverse this rejection for at least the following reasons.

Regarding independent claim 39, contrary to the Examiner's assertion, McCanne does not teach or suggest program instructions executable by the processor to *create an advertisement for a peer group in accordance with a protocol, wherein said advertisement for the peer group comprises: an identifier for the peer group; a description of a common set of services to be instantiated within the peer group by members of the peer group; and a membership service advertisement*

indicating how other peers may request to join the peer group; and publish at least a portion of said advertisement for the peer group including said identifier and said membership service advertisement. In regard to claim 39, the Examiner cites column 8, lines 14-23 as teaching *create an advertisement for a peer group in accordance with a protocol, wherein said advertisement for the peer group.* This citation describes, “To provide the services that underlie the anycast routing infrastructure, the CBB deploys service nodes in the master AS and arranges for those nodes to advertise reachability for A using the master AS's IGP.” However, these advertisements are clearly not advertisements for a peer group, but are routing advertisements for reaching a block of addresses (e.g., A) in a single node. (See, e.g., column 7, lines 31-54.)

In the Response to Arguments section of the Final Action, the Examiner submits that, “a peer group as claimed can be read as a node on a network” (emphasis added.) **The Examiner is incorrect.** No one of ordinary skill in the art would consider a single node on a network (with no description of the node belonging to a peer group or being able to form a peer group with other such nodes) to be a reasonable interpretation of the term “peer group.” The Examiner has not provided any evidence to support his assertion. Per the plain meaning of the term “peer group”, something that is always just a single node on a network cannot be considered to be a peer group. Furthermore, claim 39 recites “members of the peer group.” Thus, the peer group has multiple members and cannot be a single node on a network in McCanne. Moreover, claim 39 recites “how other peers may request to join the peer group.” It would make no sense to join a node in McCanne. Thus, the Examiner’s interpretation does not make sense.

The Examiner further submits that since the routing advertisements of McCanne reflect server availability and the routers of McCanne are configured to listen to the routing advertisements, McCanne teaches the cited limitations of claim 39. However, even if a single node on a network could be considered a “peer group”, the routing advertisements are not described as being advertisements for the node, but are advertisements for a block of addresses contained on the node. **In addition, there is no description in McCanne of the routing advertisements being created on a peer node**

for a peer group (or for “a node on a network”) in accordance with a protocol of any kind, as required by claim 39.

The Examiner cites column 18, lines 18-24 as teaching *said advertisement for the peer group comprises an identifier for the peer group*. However, this passage describes that an ARN “is provisioned with the IP addresses of some number of adjacent service nodes.” Applicants assert that one or more individual IP addresses for some number of adjacent service nodes is clearly not an identifier for a peer group, nor is it described as such. Furthermore, there is nothing in McCanne to indicate that these IP addresses are comprised in a peer group advertisement, nor in the routing advertisements of McCanne. Instead, these node identifiers are contained on ARNs (anycast referral nodes) for their use in querying other nodes during “overlay network crawling.” Therefore, this passage of McCanne clearly does not teach that such an identifier is comprised in an advertisement for a peer group.

In the Response to Arguments section of the Final Action, the Examiner submits that one or more IP addresses for adjacent nodes can clearly be used as an identifier of “a node of a network”. **However, this passage still does not teach that such an identifier is comprised in an advertisement for a peer group or “a node of a network.”** There is also nothing in McCanne describing that such an identifier is included in the routing advertisements of McCanne. In addition, these routing advertisements are not advertisements for “a node of a network,” but for reachability of a block of addresses.

The Examiner cites column 8, lines 24-39 as teaching that the peer group advertisement comprises *a description of a common set of services to be instantiated within the peer group by members of the peer group*. However, this citation only describes installing service nodes and advertising anycast blocks. It does not describe a peer group advertisement comprising a description of a common set of services to be instantiated by peer group members, as in claim 39. As noted above, routing advertisements that provide reachability information for anycast blocks clearly do not

teach anything about a peer group advertisement comprising a description of a common set of services to be instantiated within the peer group.

In the Response to Arguments section of the Final Action, the Examiner notes that column 8, lines 1-23 describe, “To provide the services that underlie the anycast routing infrastructure, the CBB deploys service nodes in the master AS’s IGP.” The Examiner submits that this teaches “a node advertising reachability information to other nodes about common services” (emphasis added.) **The Examiner is incorrect. The services described in this passage provide infrastructure support for the routing mechanisms of McCanne. They are not a common set of services to be instantiated within a peer group (or on “a node on a network”) and advertised by a peer group advertisement.** In addition, the routing advertisements of McCanne are not described as advertising reachability of common services, as suggested by the Examiner. Instead, they advertise reachability of anycast address blocks.

The Examiner cites column 5, line 61 – column 6, line 4 as teaching that the peer group advertisement comprises *a membership service advertisement indicating how other peers may request to join the peer group*. This passage mentions that “hosts can join and leave anycast groups dynamically,” and “only specially configured hosts within the network infrastructure are members of an anycast group.” However, it describes nothing about a membership service advertisement, much less one that indicates how other peers may request to join the peer group.

In the Response to Arguments section of the Final Action, the Examiner submits that McCanne teaches this limitation in column 19, lines 44-48 (“Thus it is possible for a client to issue an anycast request, and as a result, be redirected to join a multicast group.”) Column 19, lines 49-62 go on to describe that in this case, a service node instructs the client to subscribe to a particular multicast group to receive requested content. That is, in response to a request for content, a client is directed (by a specific message) to subscribe to a particular multicast group. Applicants assert that this passage clearly does not teach a membership service advertisement comprised in a peer group

advertisement (or in the routing advertisements of McCanne) indicating how other peers may join a peer group (or “a node in a network”, which the Examiner equates with “a peer group”.) Nor is the instruction to subscribe to a particular multicast group a membership service advertisement indicating how other peers may request to join a peer group. **Finally, this specific instruction from a service node to a client in response to a specific service request has nothing to do with the routing advertisements of McCanne, which the Examiner himself has equated to the peer group advertisements of Applicants’ claims.**

Finally, the Examiner cites column 9, lines 28-47 as teaching *publish at least a portion of said advertisement for the peer group including said identifier and said membership service advertisement*. This passage describes determining a location of services by translating a numeric anycast address into a DNS domain name according to a translation algorithm. This clearly has nothing to do with publishing a portion of a peer group advertisement including a membership service advertisement, much less one having the limitations recited in claim 39.

In the Response to Arguments section of the Final Action, the Examiner submits that McCanne teaches this limitation in column 9, lines 28-60, “McCanne teaches publishing content from content providers.” This passage includes the statement, “That is, anycast routing is used to capture client requests for any content published through the CBB, while additional information in the URL is used to identify the particular location or other attributes for the content in question” (emphasis added.) Applicants assert that “content from content providers” is clearly not the same as “a portion of said advertisement for the peer group including said identifier and said membership service advertisement”, nor is it described as such. In addition, this passage describes capturing client requests for published content, not advertisements for a peer group (or for a node, or even for the requested content). **Therefore, the cited passage clearly has nothing to do with this limitation of claim 39.**

For at least the reasons above, the rejection of claim 39 is unsupported by the

cited art and removal thereof is respectfully requested.

Claims 86 and 98 include limitations similar to claim 39, and so the arguments presented above apply with equal force to these claims, as well.

Section 103(a) Rejections:

The Examiner rejected claim 41 under 35 U.S.C. § 103(a) as being unpatentable over McCanne in view of Dutta et al. (U.S. Publication 2002/0073075) (hereinafter “Dutta”), and claims 48 and 49 as being unpatentable over McCanne in view of Zhang (U.S. Patent 6,810,259). Applicants traverse these rejections for at least the reasons given above.

In regard to the rejections under both § 102(e) and § 103(a), Applicants assert that numerous ones of the dependent claims recite further distinctions over the cited art. However, since the rejections have been shown to be unsupported for the independent claims, a further discussion of the dependent claims is not necessary at this time.



CONCLUSION

Applicants submit the application is in condition for allowance, and prompt notice to that effect is respectfully requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-07000/RCK.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☐ Petition for Extension of Time
- ☐ Notice of Change of Address
- ☐ Other:

Respectfully submitted,

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